118-47

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~982~~ 620

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF IN ERROR,

vs.

THE NORTHERN RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 3, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 983.

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF IN ERROR,

vs.

THE NORTHERN RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from State court	1	1
Complaint	1	1
Summons	3	2
Writ of attachment	6	3
Undertaking on release of attachment	9	4
Answer	13	5
Petition for removal to C. C. U. S.	22	15
Bond for removal to C. C. U. S.	27	18
Order for removal to C. C. U. S.	31	19
Clerk's certificate	32	20
Amended answer	34	20
Demurrer to amended answer	44	29
Stipulation waiving jury	48	31
Findings	50	31
Conclusions of law	60	42
Judgment	61	42
Order to strike out portions of amended answer	66	44
Syllabus	69	44

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Opinion of Mr. Justice Field	72	44
Concurring opinion of Judge Sawyer	116	44
Bond on writ of error	162	44
Clerk's certificate	166	45
Writ of error	168	46
Return on writ of error	169	46
Citation	170	47
Proof of service of citation	171	47

a *Transcript on Writ of Error.*

In the Circuit Court of the United States for the District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE NORTHERN RAILWAY COMPANY, Defendant. } No. 2805.

1 *Complaint.*

In the Superior Court of Colusa County, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY.

Plaintiff avers that the defendant is indebted to plaintiff in the sum of $8,694.00, State and county taxes, for the fiscal year 1881, with five per cent. penalty added thereto for the non-payment thereof, and interest thereon at the rate of two per cent. per month from the 27th day of December, 1881, and fifty cents costs of collection to date.

Plaintiff demands judgment for said several sums, and prays that an attachment may issue in form as prescribed in section five hundred and forty of the Code of Civil Procedure.

T. J. HART,
District Att'y of Colusa Co., & Att'y for Tax Collector of Colusa Co.
2 JOHN T. HARRINGTON,
Of Counsel.

STATE OF CALIFORNIA, } ss:
County of Colusa, }

I, J. B. de Jarnatt, county clerk of Colusa county, California, and *ex officio* clerk of the superior court thereof, do hereby certify that the above and foregoing is a full, true, and correct copy of the original complaint in case No. 461, as the same remains of record and on file in my office.

Witness my hand, with the seal of said superior court affixed, this 28th day of April, A. D. 1882.

[SEAL.] J. B. DE JARNATT, *Clerk.*

Endorsed: Filed April 18th, 1882. J. B. de Jarnet, clerk, by S. M. Bishop, deputy.

2 THE PEOPLE OF THE STATE OF CALIFORNIA

3 *Summons.*

In the Superior Court of the County of Colusa, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE NORTHERN RAILWAY COMPANY, Defendant. } No. 461.

Action brought in the superior court of the county of Colusa, State of California, and the complaint filed in the office of the clerk of said court.

The people of the State of California send greeting to The Northern Railway Company, Defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the superior court of
4 the county of Colusa, State of California, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county, or, if served elsewhere, within thirty days.

The said action [is] brought to recover the sum of eight thousand six hunderd and ninety-four ($8,694) dollars, State and county taxes for the fiscal year 1881, with five per cent. added thereto for the non-payment of such taxes, and interest thereon at the rate of two per cent. per month from the 27th day of December, 1881, and fifty cents costs of collection to date.

All of which is more fully set forth in plaintiff's complaint on file in this action; to which you are hereby particularly referred.

And you are hereby notified that if you fail to appear and answer the said complaint as above required, the plaintiff will take default and apply to the court for the relief therein demanded.

Given under my hand and the seal of the superior court in and for the county of Colusa, State of California, this 19th day of April, in the year of our Lord one thousand eight hundred and eighty-two.

[L. S.] J. B. DE JARNATT, *Clerk.*

5. STATE OF CALIFORNIA, } *ss:*
County of Colusa, }

I, J. B. de Jarnatt, county clerk of Colusa county, California, and *ex officio* clerk of the superior court thereof, do hereby certify that the above named and foregoing is a full, true, and correct copy of the original summons in case No. 461, as the same remains of record and on file in my office.

Witness my hand, with the seal of said superior court affixed, this 28th day of April, A. D. 1882.

[SEAL.] J. B. DE JARNATT, *Clerk.*

Endorsed: Service of the within summons and a copy of the complaint admitted, at the city and county of San Francisco, April 21st, 1882. Creed Haymond, att'y for defendant. Filed April 24th 1882. J. B. de Jarratt.

6 *Writ of Attachment.*

In the Superior Court, in and for the County of Colusa, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THE NORTHERN RAILWAY COMPANY, Defendant.

The people of the State of California to the sheriff of the county of Colusa, Greeting:

Whereas the above-entitled action was commenced in the superior court in and for the county of Colusa, by the plaintiff in the said action, to recover from the defendant in the said action the sum of eight thousand six hundred and ninety-four dollars, State and county taxes for the fiscal year 1881, with five per
7 cent. penalty added thereto, for the non-payment thereof, and interest thereon at the rate of two per cent. per month from the 27th day of December, 1881, and fifty cents costs of collection to date:

Now, we do therefore command you, the said sheriff, that you attach and safely keep all property of the said defendant, The Northern Railway Company, within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiffs' demand, as above mentioned, unless the said defendant give you security, by an undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking, and hereof make due and legal service and return.

8 Witness Hon. Geo. A. Blanchard, judge of the said superior court, in and for the county of Colusa, this 19th day of April, 1882.

Witness my hand and the seal of said court this 19th day of April, 1882.

[SEAL.] J. B. DE JARNATT, *Clerk.*

STATE OF CALIFORNIA, } ss:
County of Colusa, }

I, J. B. de Jarnatt, county clerk of Colusa county, California, and *ex officio* clerk of the superior court thereof, do hereby certify that the above and foregoing is a full, true, and correct copy of the original writ of attachment, as the same remains of record and on file in my office.

Witness my hand with the seal of said superior court affixed, this 28th day of April, A. D. 1882.

[SEAL.] J. B. DE JARNATT, *Clerk.*

(Endorsed:) Filed April 24th, 1882. J. B. de Jarnatt, clerk.

9 *Undertaking on Release of Attachment to be given to the Sheriff.*

In the Superior Court of the County of Colusa, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THE NORTHERN RAILWAY COMPANY, Defendant.

Whereas the plaintiffs in the above-entitled cause have commenced an action in the aforesaid court against the above-named defendant for the recovery of $8,694, taxes alleged to be due for the fiscal year 1881, with 5 per cent. penalty for non-payment thereof, and interest thereon at 2 per cent. per month from Dec'r 27th, 1881, and 50 cents costs of advertising;

And whereas an attachment has been issued, directed to the sheriff of the county of Colusa and placed in his hands for execu-
10 tion, whereby he is commanded to attach and safely keep all the property of the said defendant within his county not exempt from taxation, or so much thereof as may be sufficient to satisfy the plaintiffs' demand therein stated, in conformity with the complaint, at eight thousand six hundred and ninety-four dollars, with penalty, interest, and costs as aforesaid, unless the defendant give him security by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy said demand, besides costs, in which case to take such undertaking;

And whereas the said defendant is desirous of giving the undertaking mentioned in the said suit:

Now, therefore, we, the undersigned, residents of San Francisco, California, the 21st day of April, 1882, in consideration of the premises and to prevent the levy of said attachment, do hereby, jointly and severally, undertake, in the sum of seventeen hundred
11 dollars, gold coin of the United States, and promise to the effect that if the said plaintiff shall recover judgment in said action we will pay to the said plaintiff upon demand the amount of said judgment, together with the costs, not exceeding in all the said sum of $8,694, with penalty, interest, and costs as aforesaid, in gold coin of the United States.

LELAND STANFORD. [SEAL.]
W. E. BROWN. [SEAL.]

Dated the 21st of April, 1882.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Leland Stanford and W. E. Brown, whose names are subscribed as sureties to the above undertaking, being severally duly sworn, each for himself, says: That he is a resident and householder of the city and county of San Francisco, California, and is worth the sum in said undertaking specified, as the penalty thereof, over and
12 above all his just debts and liabilities, exclusive of property exempt from execution.

LELAND STANFORD.
W. E. BROWN.

Subscribed and sworn to before me, this 21st day of April, 1882.

[L. S.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, California.

STATE OF CALIFORNIA, *County of Colusa,* } ss:

I, J. B. DeJarnatt, county clerk of Colusa county, California, and *exofficio* clerk of the superior court thereof, do hereby certify that the above and foregoing is a full, true, and correct copy of the original undertaking on release of attachment, as the same remains of record and on file in my office.

Witness my hand, with the seal of said superior court affixed, this 28th day of April, A. D. 1882.

[SEAL.] J. B. DEJARNATT, *Clerk.*

(Endorsed:) Filed April 24th, 1882. J. B. DeJarnatt, clerk.

13 *Answer.*

In the Superior Court of the County of Colusa, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE NORTHERN RAILWAY COMPANY, Defendant. } No. 461.

Now comes the defendant, and answering the complaint of plaintiff herein—

I.

Denies each and every allegation in said complaint had, made, or contained; denies that it is indebted to the plaintiff in any sum whatever for any fiscal year, or for any penalty or percentage or otherwise; denies that any State or county taxes for the fiscal year mentioned in the complaint were levied or assessed against it, or against its property, or against any property in its possession, or under its control, or otherwise.

Defendant refers to and makes part of this subdivision the matters and things stated in subdivisions 2 to 23, inclusive, of this answer.

14 And for further and separate answer, defendant avers:

II.

Defendant a corporation—Its place of business—Line of road—Stockholders.

That it is, and for more than five years last past has been, a corporation existing under the laws of the State of California, and as such it constructed a line of railroad known as the Northern Railway, extending from a point on the water front in the city of Oakland, running thence in a northerly direction through Berkeley to the line of Contra Costa county, thence to Martinez; also from Port

Costa on ferry steamer "Solano" across Carquinez straits to Benicia; thence along the water front of Benicia to Arsenal Point; thence northerly through the swamp to Suisun; also beginning at Woodland, running thence northerly through Dunnigan's and Williams to depot at Willows.

That the principal place of business of defendant now is, and for many years last past has been, in the city of San Francisco, State of California. That a great number of its stockholders now are, and ever have been, citizens of the United States and residents of said State of California, while other of its stockholders now are, and ever have been, citizens of the United States and residents of States other than the State of California.

III.

Length of road in the several counties.

That the total length of said railroad in said State of California is $114\frac{30}{100}$ miles, and the length thereof in the respective counties through which it passes is as follows: In the county of Alameda, $6\frac{85}{100}$ miles; in the county of Contra Costa, $23\frac{75}{100}$ miles; in the county of Solano, $16\frac{95}{100}$ miles; in the county of Yolo, $20\frac{75}{100}$ miles, and in the county of Colusa, 46 miles.

15 IV.

Indebtedness of defendant secured by mortgage.

That prior to the 1st day of January, 1881, the defendant was indebted to divers persons, citizens of the United States, and many of them then and now citizens and residents of the State of California, in large sums of moneys advanced to construct and equip the railroad hereinbefore described. That to secure the payment of such indebtedness the said company, long prior to the said first day of January, 1881, executed and delivered a mortgage upon said Northern railway and appurtenances; that said indebtedness exceeded and still exceeds three thousand dollars per mile of said road; that no part thereof has ever been paid, except the accruing interest, and that the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company, and has been and still is secured by said mortgage.

V.

Assessment by State Board of Equalization.

That on the 2 day of May, 1881, the State Board of Equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, and rails of said railroad against defendant. That said pretended assessment was made separately upon the franchise, roadway, road-bed, and rails of said railroad, and was then and there so en-

tered upon the minutes of said board. And that said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based; and that no other assessment than the aforesaid was ever made of said property, or any part thereof, for said fiscal year.

VI.

Failure of State board to transmit assessment.

That the State Board of Equalization never did at any time transmit said pretended assessment or any assessment of said property, or any part thereof, to the assessor, or to any of the authorities of said county, and never at any time caused the same to be entered upon the assessment roll of said county for said fiscal year, or for any other year, nor has said pretended assessment, or any part thereof, or any assessment against said defendant or said property, or any part thereof, ever been entered upon or made part of any assessment roll, book, or delinquent list, in or for said county.

VII.

State board never apportioned assessment.

Defendant avers, upon its information and belief, that neither said pretended assessment nor any assessment against defendant in respect to said property, or any part thereof, was ever entered upon any assessment roll or book of said county of Colusa, nor upon any delinquent list of said county, nor was any entry relative to the action of the said State Board of Equalization in respect to the assessment or apportionment of said property, or any part thereof, ever entered upon said assessment roll or book, except a letter of the State Board of Equalization, addressed to the assessor of said county, and that said letter did not contain said assessment or any part thereof, nor a copy of said assessment or any part thereof, nor did it contain any apportionment thereof, as provided for in section 10 of article XIII of the constitution of the State of California, hereinbefore referred to, or otherwise.

VIII.

No assessment was ever made or entered on the assessment roll.

Defendant, upon information and belief, avers that neither said pretended assessment, nor any assessment against this defendant, or any other person or persons, in respect to the said property, or any part thereof, was ever entered upon any assessment roll or book of said county of Colusa, nor upon any delinquent list of said county; nor was any entry relative to the action of the said State Board of Equalization in respect to the assessment or apportionment of said property of defendant, or any part thereof, ever entered upon said assessment roll or book, except the said letter of the said State Board of Equalization. That said letter was copied by the assessor of Colusa county on or about the 1st day of June, 1881, upon the assessment. That upon said assessment roll opposite said letter is

entered in figures $621,000, and opposite said figures, under the head of taxes due, is entered in figures $8,694.00. That the
16 same entries, and no others, appear upon the delinquent list of said county for said fiscal year. That, as defendant is informed and believes, and upon such information and belief charges the truth and fact to be, there are in respect to the said property, and in respect to petitioner, no other or further entries upon any assessment roll, book, or delinquent list of said county.

IX.

State board pretended to assess the whole of said property to defendant.

That the State Board of Equalization, in making the said pretended assessment, pretended to assess to and against defendant the whole of said railroad, roadway, road-bed, rails, and franchises, and failed to deduct therefrom the value of the mortgages given and existing as aforesaid thereupon to secure the indebtedness of said company to the holders of said bonds.

X.

State board did not treat said mortgage as an interest in the property.

That in making said pretended assessment the said State Board of Equalization did not deem or treat said mortgages as an interest in said property, but did assess the whole of said property to the defendant in the same manner it would have done had there been no mortgage thereon.

XI.

Pretended assessment and apportionment made before any other assessments in the State.

That the time the said pretended assessment was made and said pretended apportionment was made by the State Board of Equalization no assessment book or roll for the said fiscal year had been completed or was in existence, nor had a single assessment or valuation for the purposes of taxation for said fiscal year been ascertained or fixed as provided by law or otherwise, and that said board, in making said valuation and apportionment, neither did nor could exercise any of the powers relative to the equalization of values for the purposes of taxation.

XII.

Authority exercised by State board violates provisions of Fourteenth Amendment.

That under the constitution of the State of California the board of supervisors of the several counties of the State constitute boards of equalization for their respective counties, whose duty it is to equalize the valuation of the taxable property in the county, except the franchise, roadway, road-bed, and rails, of railroads operated in

more than one county of the State; and that to such boards the owners of all property, except as above stated, have the right and privilege to apply for the correction of the assessed values of such property, and have the right and privilege of a hearing before the said local boards of equalization. That by the provisions of the constitution of California, and the laws thereof, this right and privilege, or any right and privilege, to be heard in relation to the said assessment, is denied in respect to the property in question. All of which defendant avers is contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

XIII.

Further violation of Fourteenth Amendment.

That the said State Board of Equalization never at any time made or had any rule or regulation relative to the assessment or valuation of railway property of any kind, nor never made or had any rule to govern or regulate its proceedings for the exercise of the powers conferred upon it by section 10 of article XIII of the constitution of California.

XIV.

Further discrimination.

That the power conferred upon the State Board of Equalization by section ten of article XIII of the constitution violates the provisions of said Fourteenth Amendment, for that said section, as to such powers, is self-executing and complete, and does not provide for personal or other notice to be given to the parties to be affected by the exercise of such powers, and does not provide for a full or any opportunity of time, place, or tribunal for such parties to be heard in defense of their rights; and that from, under, and by said provision of the constitution of the State of California the liability of owners of such property to taxation, and the amount thereof, may be fixed without notice or an opportunity to be heard.

17 XV.

Further discrimination.

That the provisions of the constitution of the State of California providing for the assessment of railroad property operated in more than one county is in contravention of the provisions of said Fourteenth Amendment of the Constitution of the United States, in this, that it discriminates against the owners of railroad property operated in more than one county; in this, that whereas, under section four of said article XIII of the constitution of the State of California, if the owner of other kinds of real property have a mortgage, lien, or incumbrance thereon, he is not liable to assessment or taxation upon such property, nor for the value of his interest in such real estate over and above the value of such mortgage, lien, or incumbrance; whereas in case of railroad property no such allowance or deduc-

tion is made, had, or allowed with respect to any mortgage, lien, or incumbrance there may be upon such property.

XVI.

Further discrimination.

That all owners of railroad property, operated in more than one county, by virtue of the provisions of said section ten, of article XIII, which relate to the assessment by the State Board of Equalization of such property, are denied any protection from the laws of the State of California, which—

(*a.*) Require that property shall be taxed in proportion to its value.

(*b.*) Require such proportions to be ascertained by a general law.

(*c.*) Require that before liability be fixed an opportunity to be heard must be given.

(*d.*) Give an appeal from the assessor to boards of equalization.

(*e.*) Require the assessment to be made in the county, and prevent its being made in localities distant from the *situs* of the property.

(*f.*) Which prescribe mode and manner of the assessment.

(*g.*) Which allow deductions for indebtedness secured by mortgage.

And defendant avers that at and before and ever since the adoption of the constitution of California, now in force, there were and are existing under the laws of said State corporations of various kinds formed for the purpose of and actually operating and doing business, and holding and using and operating property in more than one county in said State, and that at all of said times there were and there now are divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are railroads owned by corporations formed under the general laws of said State which are only operated in one county. That by the provisions of section ten of article XIII of said State constitution persons operating railroads in more than one county in the State have been singled out from all other persons operating property in more than one county and denied the right, common to all other persons, to appeal for relief from over-valuations of their property by assessors to the local board of equalization and denied the rights and privileges accorded by the laws to all other persons in that respect.

XVII.

System adopted by said board violates rules of equality.

That the State Board of Equalization in making said pretended assessment of the said roadway did willfully and designedly include in the valuation of said roadway the value of fences erected upon the land of coterminous proprietors; and did willfully and designedly value the said roadway at a greater value than the value of other property similarly situated, and greater than its actual

value, upon the ground that such increased valuation should be made because the title of defendant thereto was acquired by condemnation.

That the value of such fences which were not the property of defendant nor the property of the owners of said roadway, and the increased value affixed to the roadway by the system adopted by the board, are blended in said pretended assessment, and that there is no mode or means by which such illegal valuations can be separated from those which may be legal.

Defendant, upon its information and belief, avers that the said State Board of Equalization adopted a system of valuation in respect to all the property mentioned and referred to in section 10 of article XIII of the Constitution, which defines the power of said board, which system was by said board intended to and which did operate unequally, and which was intended to and did violate the rule prescribed by said section—that all of such property should be assessed at its actual value. That the system so adopted was applied by the said board in making said pretended assessment of said property, and in making the assessment of all property in the State over which the pretended authority of said board extended.

18 That said system was to include within the value of the roadway the value of the fences owned and possessed by coterminous proprietors, and to value said roadway at double its actual value, because the right thereto was acquired by condemnation. That said system relative to the franchise was to value it at $2,000 per mile, when the actual value, as the board well knew, of said franchise as an entirety did not exceed twenty-five dollars. That said system as to the valuation of other property to be assessed by the said board was to value it at double its actual value. That the said system was by the said board adopted and was by it applied in making all assessments made by it with the intent and purpose wrongfully and unlawfully to cause the persons and property assessed by it to pay double the rate of State and county taxes paid by the owners of property assessed by the local authorities. And defendant avers, upon its information and belief, that the said board applied the said system in making the pretended assessment against the property upon which the taxes mentioned in the complaint are based. And defendant, upon its information and belief, avers that the said State Board of Equalization, in making said pretended assessment, did not value any of said property at its actual value, but did intentionally, and for the purpose of making defendant pay an unequal proportion of State and county taxes, assess the said property at double its actual value. And defendant avers that the general rule in this State has been to assess property at not over two-thirds its cash or actual value, and that this rule was adopted and acted upon by all local assessors in the State, and by the said State board, except in the exercise of the power conferred by section 10, art. XIII, of the State constitution for said fiscal year, and that all property save that assessed by the said State board under said section has been valued and assessed at one-third less

than its actual value, and that the taxes have been collected on valuations so made.

XVIII.

Valuation excessive.

Than neither the franchise, roadway, road-bed, or rails were assessed by the State Board of Equalization in said pretended assessment at their actual value, or in proportion to their value, but were wilfully and intentionally assessed greatly in excess and out of proportion to such value, and greatly in excess of and out of proportion to the rate at which all other property in said State is valued, for the purposes of taxation, to wit, one hundred per cent. in excess thereof.

XIX.

Sole authority upon which tax is based.

That said pretended assessment is the only assessment of said property, and the pretended tax, for non-payment of which this action is brought, is founded upon said pretended assessment and upon no other assessment.

XX.

County tax not the same in all townships and districts.

The defendant, upon its information and belief, avers that the tax levied by the Board of Supervisors for said fiscal year was not fixed at the same rate in every township and district in said county. And defendant, upon its information and belief, avers that said tax was levied by said board without authority of law, and that the same was illegally placed upon said assessment roll or book and delinquent list without authority. That upon the assessment roll and delinquent list of said county the said several taxes, State, county, township, and district, are blended and cannot be separated.

XXI.

State tax void.

And defendant, upon its information and belief, avers that the State Board of Equalization never at any time did for the said fiscal year fix or determine any rate of taxation for State purposes, and that the sum and the whole thereof claimed in the complaint for State taxes for said fiscal year is illegal and void.

And for further and separate answer defendant avers:

XXII.

Plaintiff's causes of action based upon assessment by State Board of Equalization.

That on the 2 day of May, 1881, the State Board of Equalization of the State of California, pretending to act under and by virtue of the

powers conferred upon it by section 10 of article XIII of the
19 constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, and rails, of the railroad hereinbefore described and known as the Northern railway, against this defendant; that said pretended assessment was made separately upon the franchise, roadway, road-bed, and rails, of said railroad, and was then and there so entered upon the minutes of said board; that the said pretended assessment is the assessment upon which the several taxes mentioned in plaintiff's complaint are claimed to be due, and that no other assessment than such pretended assessment was ever made against or upon said property or any part thereof.

XXIII.

Property not assessed to the owner.

That at the time said pretended assessment was made Eugene Kelly and Henry D. Laidlaw were, and for more than three years prior thereto had been, the owners and claimants of all the franchises, roadway, road-bed, and rails of said Northern railway, and of all the property, real and personal, against or upon which said pretended assessment was made; that said property was by the defendant duly and lawfully conveyed to the said Eugene Kelly and Henry Laidlaw on the 14th day of April, 1877, by a conveyance duly acknowledged and entitled to record, and which was afterwards, to wit, within said year 1877, duly recorded in the proper book in the recorder's office in each of the counties into and through which said road runs or is situated; that said conveyance ever since has been and still is of record as aforesaid and in full force and effect; that under and by virtue of the provisions of section 863 of the Civil Code of California, and the provisions of section 2924 of said Code as amended in 1874, said conveyance transferred to the said —— —— the whole estate of defendant in said property, and from thence hitherto, by reason of said conveyance and said provisions of the said Code, the defendant has had no estate or interest in said property or any part thereof.

And defendant avers that at the time said pretended assessment was made the Central Pacific Railroad Company, a corporation duly organized and existing, was, and for more than three years prior thereto had been, in the full, open, and notorious possession and control of all of said property.

And defendant avers that at the time said pretended assessment was made the defendant was not, nor had it been for more than three years prior thereto, the owner or claimant of the said Northern railway, or of any part or portion of the property upon or against which pretended assessment was made, nor was it at the time said pretended assessment was made, nor at any time within three years next preceding the time of the making of said pretended

assessment, in the possession of, or control of, said property, or any portion thereof.

Wherefore defendant prays it be hence dismissed, with costs.

W. F. GOAD & J. W. GOAD,
Attorney- for Defendant.

CREED HAYMOND, *Of Counsel.*

20 *Verification.*

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

James O. B. Gunn, being first duly sworn, on oath says: That he is an officer, to wit, the secretary of the corporation defendant herein; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on his own information or belief, and as to those he believes it to be true.

JAMES O. B. GUNN.

Subscribed and sworn to before me, this 22d day of April, A. D. 1882.

[SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

Endorsed: Filed April 25th, 1872. J. R. DeJarnatt, clerk.

21 STATE OF CALIFORNIA, } ss:
County of Colusa, }

I, J. B. DeJarnatt, county clerk of Colusa county, California, and *ex officio* clerk of the superior court thereof, do hereby certify that the above and foregoing is a full, true, and correct copy of the original answer in case No. 461, as the same remains of record and on file in my office.

Witness my hand, with the seal of said superior court affixed, this 28th day of April, A. D. 1882.

[SEAL.] J. B. DEJARNATT, *Clerk.*

[Endorsed:] No. 461. Superior court, county of Colusa. The People, &c., plaintiff, *vs.* The Northern Railway Company, defendant. Answer. Due service of the within answer admitted this 25th day of April, 1882. T. J. Hart & J. T. Harrington attorney- for plaintiff. W. F. Goad & J. W. Goad, attorney- for defendant. Creed Haymond, of counsel.

22 *Petition.*

In the Superior Court, County of Colusa, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE NORTHERN RAILWAY COMPANY, Defendant. } No. 461.

To the honorable the superior court in and for the county of Colusa, State of California:

Your petitioner, The Northern Railway Company, respectfully shows:

That your petitioner is the sole defendant in the above-entitled action now pending in this honorable court.

That said action was brought on the 19th day of April, 1882, the complaint therein having been duly filed on said date.

That the defendant has on this day, and before the filing of this petition, appeared in said action, and filed an answer to the complaint of plaintiff.

That no term of this court has been held since this action; and this petition is filed before the term at which the cause could be first tried.

That no trial of said action has been had, and this petition is filed before the trial thereof.

That said action is a suit of a civil nature at law, and arising under the Constitution and laws of the United States, and that the matter in dispute exceeds, exclusive of costs, the sum and value of five hundred dollars.

That said action is brought by the plaintiff to recover from the defendant on account of taxes claimed by the plaintiff to be due and payable from the defendant for State and county purposes, as will more fully appear by a reference to the plaintiff's complaint on file herein.

23 That the assessment described in the complaint and answer, and which the plaintiff in this action claims to be due and payable, is an assessment which the State Board of Equalization of the State of California pretended to make under and by virtue of the authority conferred upon the board by section 10 of article XIII of the State constitution.

That the defendant claims in this action that said provisions of the constitution of the State of California, and the authority thereby conferred upon said State Board of Equalization, violate the provisions of the Fourteenth Amendment to the Constitution of the United States, in this, that its effect is to deprive the defendant of its property without due process of law, and that under it the defendant is denied any protection from the general laws of the State of California, which—

First. Require that property shall be taxed in proportion to its value;

Second. Require such proportions to be ascertained by a general law;

Third. Require, before the liability is fixed, that the right to be heard must be given;

Fourth. Which give an appeal from the assessor to another tribunal;

Fifth. Require the assessment to be made in the county, and prevent its being made in localities distant from the *situs* of the property;

Sixth. Prescribe the mode and manner of the assessment; and

Seventh. Which allow deductions from indebtedness secured by mortgage;

Eighth. Which require property to be assessed at its actual value.

That prior to the 1st day of January, 1881, the defendant was indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, and others of them then and now citizens and *bona fide* residents of other States of the Union, in large sums for moneys advanced to construct and equip its railroad described in the answer herein. That to secure the payment of such indebtedness the defendant long prior to the said day executed and delivered a mortgage upon its railroad and all rolling-stock and appurtenances, and upon a large number of tracts of land situated in different counties of the State of California, which said tracts of land then were, and ever since have been, the property of defendant. That said indebtedness exceeded and still exceeds three thousand dollars per mile of said road. That no part thereof has ever been paid except the accruing interest, and that the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company defendant, and has been, and still is, secured by said mortgage.

That the said pretended assessment made as aforesaid by said State Board of Equalization included the whole value of said property without any deduction therefrom. That under the constitution of the State of California, when property other than property such as is described in the complaint is assessed and valued for the purposes of taxation, it is the duty of the assessor making such valuation to deduct from the value of such property all indebtedness secured by mortgage or lien upon the property. That the supreme court of the State of California, the highest tribunal in said State, has decided that defendant (and others similarly situated) is not entitled to the protection of the Fourteenth Amendment of the Constitution
24 of the United States; that defendant and others similarly situated are not entitled to the reduction hereinbefore referred to; that said decision of the supreme court of the State of California is in full force and is binding upon the inferior courts of the State, and especially upon this court; that the facts stated in the answer herein are true, which answer defendant refers to and makes part of this petition. That the plaintiff in said action will rely upon the decision of the supreme court of the State of California, and that the construction of said several acts of Congress and of the Fourteenth Amendment to the Constitution of the United States is in this action disputed, and must necessarily be adjudged and de-

termined herein; and that if said adjudication and determination be in favor of defendant and against that heretofore made by the supreme court of the State of California, such adjudication and determination will be conclusive in favor of defendant upon the merits of this action; that this is a suit arising under the Constitution and laws of the United States.

That your petitioner has made and filed with this petition a bond in the penal sum of five thousand dollars, with good and sufficient surety, conditioned that your petitioner shall enter in the circuit court of the United States, to be held in the district of California, in the ninth circuit, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and also shall appear in said circuit court and enter special bail in said suit if special bail was originally requisite therein, and shall do all such other and further appropriate acts as by the act of Congress approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," are requisite to be done upon removal of a suit in a circuit court of the United States from a State court; and your petitioner is ready and willing to give such other and further bonds and to do all such other acts as may be lawfully required.

Your petitioner therefore prays that this honorable court will accept this petition and said bond and proceed no further in said suit, and that said suit may be removed into the circuit court of the United States in and for the district of California, in the ninth circuit, as required by statute of the United States in such cases made and provided.

And your petitioner will ever pray, etc.

W. F. GOAD & J. W. GOAD,
Attorneys for Petitioner.

CREED HAYMOND,
Of Counsel.

25 Endorsed.

STATE OF CALIFORNIA, } ss:
County of Colusa, }

I, J. B. DeJarnatt, county clerk of Colusa county, California, and *ex-officio* clerk of the superior court thereof, do hereby certify that the above and foregoing is a full, true, and correct copy of the original petition for transfer to circuit court in case No. 461, as the same remains of record and on file in my office.

Witness my hand with the seal of said superior court affixed, this 28th day of April, A. D. 1882.

[SEAL.] J. B. DEJARNATT, *Clerk.*

26 [Endorsed:] No. 461. In the superior court, county of Colusa. The People, &c., plaintiff, *vs.* Northern Railway Com-

pany, defendant. Petition for transfer to circuit court. Filed April 25th, 1882. J. B. DeJarnatt, clerk. W. F. & J. W. Goad, attorneys for petitioner. Creed Haymond, of counsel.

27 *Bond on Removal.*

In the Superior Court, County of Colusa, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE NORTHERN RAILWAY COMPANY, Defendant. } No. 461.

Know all men by thesepresents, that we, The Northern Railway Company, as principal, and W. E. Brown and N. T. Smith, as sureties, are held and firmly bound unto The People of the State of California, plaintiff, in the sum of five thousand dollars, to be paid to the said plaintiff; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 22d day of April, 1882.

Whereas the above-entitled action was brought, on or about the 19th day of April, 1882, in the superior court in the county of Colusa, State of California, and the same is now pending in said superior court by The People of the State of California against said Northern Railway Company, and is removable into the circuit court of the United States in and for the district of California, in the ninth circuit, under and by that certain act of Congress of the United States approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes;"

And whereas said The Northern Railway Company has made, and is about to file herewith, its petition in said suit in said superior court in and for the county of Colusa, State of California, for the removal of said suit into said circuit court of the United States, to be held in the said district of California, in the ninth circuit:

Now, the condition of this obligation is such, that if said The Northern Railway Company shall enter in such circuit
28 court of the United States on the first day of its next session a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and also shall there appear and enter special bail in such suit, if special bail was originally requisite therein, and shall do all such other appropriate acts as by the said act of Congress are required to be done upon the removal of a suit from a State court into the circuit court of the United States, then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] NORTHERN RAILWAY COMPANY,
By JAS. O. R. GUNN, *Secretary.*
W. E. BROWN. [SEAL.]
N. T. SMITH. [SEAL.]

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

W. E. Brown and N. T. Smith, the sureties in the foregoing obligation, being each sworn, each for himself says: That he is a resident of the State of California and a freeholder therein, and is worth the sum of five thousand dollars over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

W. E. BROWN.
N. T. SMITH.

Subscribed and sworn to before me, this 22d day of April, 1882.
[L. S.] CHARLES J. TORBERT,
Notary Public.

I hereby approve of the above sureties, and accept and approve the foregoing bond.
Dated April 25th, 1882.

J. B. DEJARNATT, *Clerk.*

29 STATE OF CALIFORNIA, } ss:
County of Colusa, }

I, J. B. DeJarnatt, county clerk of Colusa county, California, and *ex-officio* clerk of the superior court thereof, do hereby certify that the above and foregoing is a full, true, and correct copy of the original bond in case No. 461, as the same remains of record and on file in my office.
Witness my hand, with the seal of said superior court affixed, this 28th day of April, A. D. 1882.
[SEAL.] J. B. DEJARNATT, *Clerk.*

30 Endorsed: No. 461. In the superior court, county of Colusa. The People, &c., plaintiff, *vs.* The Northern Railway Company, defendant. Bond. Filed April 25th, 1882. J. B. DeJarnatt, clerk. W. F. & J. W. Goad, attorney for petitioner. Creed Haymond, of counsel.

31 Superior Court of the County of Colusa, State of California.
April Session, A. D. 1882.

APRIL 25*th*, 1882.

Present: Hon. Geo. A. Blanchard, judge; J. B. DeJarnatt, clerk; J. M. Steele, sheriff.

Whereupon the following proceedings were had, to wit:

Order Transferring Cause.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY. } No. 461.

On filing the petition and bond, as required by the Federal stat-

ute, said cause is hereby transferred to the circuit court of the United States in and for the district of California, in the ninth circuit.

GEO. A. BLANCHARD, *Judge.*

Attest. A true copy.

[SEAL.] J. B. DEJARNATT, *Clerk.*

32 *Clerk's Certificate.*

In the Superior Court of Colusa County, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY. } No. 461.

I, J. B. DeJarnatt, county clerk of the county of Colusa, State of California, and *ex-officio* clerk of the superior court thereof, do hereby certify that I have compared the foregoing transcript with the original paper in the above-entitled action, now on file in my office, and with all orders therein made and entered on the minutes of said court, and that the said transcript is correct.

I further certify that a sufficient undertaking or transfer, in due form of law, was on the 25th day of April, 1882, properly filed in said cause.

33 And I further certify that the foregoing is a copy of the whole of the record in said action on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the superior court of Colusa county, this 26th day of April, 1882.

[SEAL.] J. B. DEJARNATT, *Clerk, &c.*

Endorsed: In the circuit court of the United States for the district of California. Transferred papers. Filed June 27, 1882. L. S. B. Sawyer, clerk.

34 *Amended Answer.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE NORTHERN RAILWAY COMPANY, Defendant. } No. 2805.

Now comes the defendant, and by leave of the court first had and obtained files this its amended answer:

I.

It denies each and every allegation in said complaint had, made, or contained.

Denies that it is indebted to the plaintiff in any sum whatever for any fiscal year, or for any penalty or percentage or otherwise.

Denies that any State or county taxes for the fiscal year mentioned in the complaint were levied or assessed against it or against

its property, or against any property in its possession or under its control, situated in the county of Colusa or elsewhere in said State of California.

Defendant refers to and makes part of this subdivision the matter stated in subdivisions 2 to 24 of this answer.

35 And for further and separate answer defendant avers as follows:

II.

Defendant a corporation—Its place of business—Line of road—Stockholders.

The defendant is, and for more than five years last past has been, a corporation existing under the laws of the State of California, and as such it constructed a line of railroad known as the Northern railway, extending from a point on the water-front in the city of Oakland, running thence in a northerly direction through Berkeley to the line of Contra Costa county; thence to Martinez; also from Port Costa on ferry steamer "Solano," across Carquinez straits to Benicia; thence along the water front to Benicia to Arsenal Point; thence northerly through the swamp to Suisun.

Also beginning at Woodland, running thence northerly through Dunnigan's and Williams to depot at Willows.

The principal place of business of defendant now is, and for many years last past has been, in the city of San Francisco, State of California. Some of its stockholders and members now are, and ever have been, citizens of the United States, and residents in said State of California; and some of its stockholders and members now are, and ever have been, citizens of the United States, and *bona fide* residents of States other than the State of California.

III.

Length of road in the several counties.

The total length of said railroad in said State of California on the first day of March, 1881, was 114.30 miles, and the length thereof in the respective counties through which it passed was as follows: In the county of Alameda, 6.85 miles; in the county of Contra Costa, 23.75 miles; in the county of Solano, 16.95 miles; in the county of Yolo, 20.75 miles; in the county of Colusa, 46 miles.

36 IV.

Indebtedness of defendant secured by mortgage.

On the 1st day of April, 1875, the defendant was indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, in large sums of money advanced to construct and equip the railroad hereinbefore described. To secure the payment of such indebtedness the defendant, on the said first day of April, 1875, executed and delivered a mortgage upon its said railroad, its franchises and all rolling-stock and appurtenances. Said in-

debtedness exceeded and still exceeds three thousand dollars per mile of said road, and no part thereof has ever been paid except the accruing interest, and the whole thereof is now and since the execution of said mortgage has been a valid and subsisting indebtedness against said company, and has been and still is secured by said mortgage. Much of said indebtedness subsisted and still subsists in favor of citizens and *bona fide* residents of the State of California.

V.

Assessment by State Board of Equalization.

On the 2d day of May, 1881, the State Board of Equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad against defendant. Said pretended assessment was made separately upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad, and was then and there so entered upon the minutes of said board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based; and no other assessment than the aforesaid was ever made of said property, or any part thereof, for said fiscal year.

VI.

Failure of State board to transmit assessment.

The State Board of Equalization never did at any time transmit said pretended assessment, or any assessment of said property, or any part thereof, to the assessor, or to any of the authorities of said county, and never at any time caused the same to be entered upon the assessment roll of said county for said fiscal year, or for any other year, nor has said pretended assessment, or any part thereof, or any assessment against said defendant or said property, or any part thereof, ever been entered upon or made part of any assessment roll, book, or delinquent list in or for said county.

VII.

State board never apportioned assessment.

Defendant avers, upon its information and belief, that neither said pretended assessment nor any assessment against defendant in respect to said property, or any part thereof, was ever entered upon any assessment roll or book of said county, or upon any delinquent list of said county, nor was any entry relative to the action of the said State Board of Equalization in respect to the assessment or apportionment of said property, or any part thereof, ever entered upon said assessment roll or book, except a letter from the State Board of Equalization, addressed to the assessor of said county, which letter did not contain

said assessment or any part thereof, nor a copy of said assessment or any part thereof, nor did it contain any apportionment thereof, as provided for in section 10 of article XIII of the constitution of the State of California, hereinbefore referred to or otherwise.

VIII.

No assessment was ever made or entered on the assessment roll.

Defendant, upon information and belief, avers that neither said pretended assessment nor any assessment against this defendant, or any other person or persons, in respect to the said property, or any part thereof, was ever entered upon any assessment roll or book of said county, nor upon any delinquent list of said county, nor was any entry relative to the action of the said State Board of Equalization in respect to the assessment or apportionment of said property of defendant, or any part thereof, ever entered upon said assess-
37 ment roll or book, except the said letter of the said State Board of Equalization. Said letter was copied by the assessor of said county on or about the 1st day of June, 1881, upon the assessment. Upon said assessment roll opposite said letter is entered in figures $621,000, and opposite said figures, under the head of taxes due, is entered in figures $8,694.00. The same entries, and no others, appear upon the delinquent list of said county for said fiscal year. As defendant is informed and believes, and upon such information and belief charges the truth and fact to be, there are in respect to the said property, and in respect to defendant, no other or further entries upon any assessment roll, book, or delinquent list of said county.

IX.

State board pretended to assess the whole of said property to defendant.

The State Board of Equalization, in making the said pretended assessment, pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises, without deducting therefrom the value of the mortgage, or any part thereof, given and existing thereon as aforesaid to secure the indebtedness of said company to the holders of said bonds, notwithstanding, as defendant avers, they had full knowledge of the existence of such mortgage.

X.

State board did not treat said mortgage as an interest in the property.

In making said pretended assessment the said State Board of Equalization did not deem or treat said mortgages as an interest in said property, but did assess the whole value of said property to the defendant in the same manner it would have done had there been no mortgages thereon.

XII.

Authority exercised by State board violates provisions of Fourteenth Amendment.

Under the constitution of the State of California the board of supervisors of the several counties of the State constitute boards of equalization for their respective counties, whose duty it is to equalize the valuation of the taxable property in the county, except the franchise, roadway, road-bed, rails, and rolling-stock of railroads operated in more than one county of the State, and to such boards the owners of all property, except as above stated, have the right and privilege to apply for the correction of their assessments, and have the right and privilege of a hearing before the said local boards of equalization. By the provisions of the constitution of California, and the laws in pursuance thereof, this right and privilege, or any right or privilege, to be heard in relation to assessments is denied to defendant in respect to the property in question. All of which defendant avers is contrary to the provision of the Fourteenth Amendment to the Constitution of the United States, which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

XIII.

Further violation of the Fourteenth Amendment.

The power conferred upon the State Board of Equalization by section ten of article XIII of the constitution of California violates the provisions of the Fourteenth Amendment to the Constitution of the United States, which declares that no State shall deprive any person of life, liberty, or property without due process of law; for that said section, as to such power, is self-executing and complete, and
38 does not provide for personal or other notice to be given to the parties to be affected by the exercise of such power; and does not provide for a full or any opportunity of time, place, or tribunal for such parties to be heard in defense of their rights; and hence, under and by said provision of the constitution of the State of California, the liability of owners of such property to taxation, and the amount thereof, may be fixed without notice to them or an opportunity to be heard.

XIV.

Further discrimination.

The provisions of section four of the constitution of the State of California, providing for the assessment of the property of railroad and other *quasi*-public corporations, is in contravention of the provisions of said Fourteenth Amendment of the Constitution of the United States, in that it discriminates against such corporations; in this, that whereas, under said section four of said article XIII of the constitution of the State of California, if the property of natural persons or corporations, not *quasi*-public, has a mortgage, lien, or incumbrance thereon, they are not liable to assessment or taxation

upon such property, but only upon the value of their interest in such property over and above the value of such mortgage, lien, or incumbrance; whereas, in the case of the property of railroad and other *quasi*-public corporations, no such allowance or deduction is made, had, or allowed with respect to any mortgage, lien, or incumbrance there may be upon such property; and also in this, that while the tenth section of article XIII of the constitution of the State of California provides the same mode for the assessment of the franchises, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county, whether such property be owned by railroad or other *quasi*-public corporations, or by private corporations, or by natural persons, yet section four of article XIII of said constitution permits or allows indebtedness secured by mortgage, trust deed, or otherwise to be deducted from the value of such property only when it is owned by natural persons or corporations not *quasi*-public, and denies such deduction when the property is owned by railroad or other *quasi*-public corporations.

XV.

Further discrimination.

Section 10 of article XIII of said constitution of California provides that all property, except the franchise, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county in the State, shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by law.

The laws of said State prescribe that all property, except that above mentioned, shall be assessed in the county in which it is situated by an assessor elected by the people of such county.

Said assessors for each of said years have assessed to the owners and holders thereof in their respective counties the indebtedness of the defendant secured by the mortgage herein mentioned, but never have, nor does the law permit them so to do, made any deduction from the assessment of any of the property of this defendant, on account of the assessments made as aforesaid to the holders of such indebtedness.

XVI.

Further discrimination.

All owners of railroad property, operated in more than one county, by virtue of said section ten of article XIII, are denied any protection from the laws of the State of California which—

(*a.*) Require that property shall be taxed in proportion to its value.

(*b.*) Require such proportions to be ascertained by a general law.

39 (*c.*) Require that before liability be fixed an opportunity to be heard must be given.

(*d.*) Give an appeal from the assessor to boards of equalization.

(*e.*) Require the assessment to be made in the county, and prohibit its being made in localities distant from the *situs* of the property.

(*f.*) Which prescribe mode and manner of the assessment.

And defendant avers that at and before and ever since the adoption of the constitution of California, now in force, there were and are existing under the laws of said State corporations of various kinds, formed for the purpose of and actually operating and doing business and holding and using and operating property in more than one county in said State, and that at all of said times there were and there now are divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are railroads owned by corporations formed under the general laws of said State, and also by natural persons, which are only operated in one county. That by the provisions of section ten of article XIII of said State constitution persons operating railroads in more than one county in the State have been singled out from all other persons operating property in more than one county and denied the right, common to all other persons, to appeal for relief from over-valuations of their property by assessors to the local board of equalization, and denied the rights and privileges accorded by the laws to all other persons in that respect.

Corporations in said State of California now are and ever have been formed under general laws relating thereto, and railroad and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are and ever have been designated by the laws of California as private corporations. Under the provisions of the laws relating to the formation of private corporations such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together; and there now exist in California, and ever have existed, corporations formed under said laws for fire, marine, mutual life, health, and accident insurance; building, constructing, and operating railroads, wagon roads, telegraphs, bridges, ferries, wharves, chutes, and piers, and for constructing and operating canals, for the purposes of acquiring lands in large tracts and distributing them as homesteads among the corporators, for savings and loans, for mining, for the sale and distribution of water in cities and towns, for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemeteries, agricultural fairs, and various other purposes.

In said State of California there now are, and for more than three years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corporations other than railroad corporations, to wit, by mining and manufacturing corporations. There now is, and for more than three years last past has been, a railroad in use and operation, extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State, a distance of twenty-

seven miles, which said road now is, and ever has been, operated in more than one county in this State, and is of the same gauge as the road of this defendant, and has ever been operated for like uses and purposes.

Said road, with all its equipments, now is, and for more than three years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States and resident of the State of California.

There now is, and for more than three years last past has been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and in the county of Santa Cruz, eastward through said county and into the county of Monterey to the town of Pajaro, a distance of about twenty-one miles. Said road now is, and for a long time past has been, owned, operated, and used for like purposes for which the defendant's road is owned, operated, and used, and that the same now is, and for a long time past has been, in the ownership and operated by the Pacific Improvement Company, a private corporation formed under the laws of the State of California, which said corporation is not, and never has been, a railroad or *quasi*-public corporation.

There now are, and for more than five years last past have been, divers other railroads owned and operated in said State by corporations other than railroad corporations, and by individuals and partnerships; and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which such lands are situated, and all are entitled under the laws of said State to the deductions provided for in said laws, and, as said defendant, upon information and belief, avers, have been allowed such deductions.

XVII.

System adopted by said board violates rules of equality.

The State Board of Equalization, in making said pretended assessment of the said roadway of defendant, did willfully and designedly include in the valuation of said roadway the value of fences erected upon the land of coterminous proprietors, and did willfully and designedly value the said roadway at a greater value than the value of other property similarly situated, and greater than its actual value, upon the ground that such increased valuation should be made because the title of defendant thereto was acquired by condemnation.

The value of such fences, which were not the property of defendant nor the property of the owners of said roadway, and the increased value affixed to the roadway by the system adopted by the board, are blended in said pretended assessment, and there is no mode or means by which such illegal valuation can be separated from those which may be legal.

XVII (*a*).

Value of ferry-boats blended with other values.

The route of defendant's road crosses the Straits of Carquinez, being part of the waters of the bay of San Francisco from Port Costa to Benicia, a distance of about one mile, over which defendant transports its passengers and freight cars upon the ferry steamer Solano, of the burden of 3,541.31 tons. Said steamer is of great value, and is of the class which by law is required to be registered, and now is, and for more than four years last past has been, registered and enrolled in the city and county of San Francisco, State of California, in the name of the Pacific Improvement Company, a private corporation under the laws of the State of California, and defendant has no interest in said steamer save a lease thereof.

Said steamer now is, and has been for four years last past, used for the purposes above stated.

The State Board of Equalization in making said pretended assessment of the said roadway, road-bed, rails, and rolling-stock of defendant did willfully and designedly include in the valuation thereof the value of said ferry-boat, and the value of said boat is blended in paid pretended assessment with the value of said roadway, road-bed, rails, and rolling-stock, and there is no means by which such value can be separated from the valuation placed by said board upon said roadway, road-bed, rails, and rolling-stock, or either of them.

41 XXII.

Plaintiff's causes of action based upon assessment by State Board of Equalization.

On the 2d day of May, 1881, the State Board of Equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section ten of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of the railroad hereinbefore described against this defendant; that said pretended assessment was made separately upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad, and was then and there so entered upon the minutes of said board. Said pretended assessment is the assessment upon which the several taxes mentioned in plaintiff's complaint are claimed to be due, and that no other assessment than such pretended assessment was ever made against or upon said property or any part thereof.

42 Wherefore defendant prays it be hence dismissed, with costs.

WILSON & WILSON,
Attorneys for Defendant.

S. W. SANDERSON AND
CREED HAYMOND,
Of Counsel.

43 *Verification.*

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

W. V. Huntington, being first duly sworn, on oath says: That he is an officer, to wit, the president of the corporation defendant herein; that he has read the foregoing amended answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on his own information or belief, and as to those he believes it to be true.

W. V. HUNTINGTON.

Subscribed and sworn to before me, this 22d day of May, A. D. 1883.

[SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

Endorsed: Filed July 9th, 1883. L. S. B. Sawyer, clerk.

44 *Demurrer to Defendant's Answer.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

v.

THE NORTHERN RAILWAY CO., Defendant.

Demurrer to Defendant's Amended Answer.

The plaintiff demurs to the defendant's amended answer, and for grounds of demurrer alleges:

I.

That the said amended answer, taken as a whole, does not state facts sufficient to constitute a defense.

II.

45 That paragraphs I to IV, inclusive, of said amended answer do not, jointly or separately, state facts sufficient to constitute a defense.

III.

That paragraph IV of said amended answer does not state facts sufficient to constitute a defense.

IV.

That paragraph V of said amended answer does not state facts sufficient to constitute a defense.

V.

That paragraph VI of said amended answer does not state facts sufficient to constitute a defense.

VI.

That paragraph VII of said amended answer does not state facts sufficient to constitute a defense.

VII.

That paragraph VIII of said amended answer does not state facts sufficient to constitute a defense.

VIII.

That paragraph IX of said amended answer does not state facts sufficient to constitute a defense.

46

IX.

That paragraph X of said amended answer does not state facts sufficient to constitute a defense.

X.

That paragraphs numbered XII to XVI, inclusive, of said amended answer do not separately or jointly state facts sufficient to constitute a defense.

XI.

That paragraph XVI of said amended answer does not state facts sufficient to constitute a defense.

XII.

That paragraph XVII of said amended answer does not state facts sufficient to constitute a defense.

XIII.

That paragraph XXII of said amended answer does not state facts sufficient to constitute a defense.

XVI.

That paragraph XXIV of said amended answer does not state facts sufficient to constitute an answer.

47

E. C. MARSHALL,
Attorney General, Attorney for the Plaintiff.

Endorsed: Service hereof by copy admitted this 19th day of July, 1883. H. S. Brown, defendant's attorney. Filed July 19, 1883. L. S. B. Sawyer, clerk.

48 At a stated term, to wit, the July term, A. D. 1883, of the circuit court of the United States of America, of the ninth

judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco, on Friday, the 27th day of July, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The Honorable S. J. Field, circuit justice; the Honorable Lorenzo Sawyer, circuit judge.

Stipulation Waiving Jury.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY. } No. 2805.

It is hereby stipulated by and between the above-entitled
49 parties that the above-entitled action be tried both upon issues of fact as well as of law, by — before the court, sitting without a jury, a trial by jury being expressly waived.

T. J. HART,
A. L. RHODES,
JOHN T. HARRINGTON,
E. C. MARSHALL,
Att'y General,
Att'ys for Pl'ff.
P. D. WIGGINTON,
H. S. BROWN,
Att'ys for Defendant.
WILSON & WILSON,
Att'ys for Def't.

Endorsed: Filed July 27th, 1883. L. S. B. Sawyer, clerk.

50 *Findings.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY. } No. 2805.

The above-entitled cause having, on the 27th day of July, 1883, been brought on to a hearing before the court, without a jury, the said parties, by stipulation in writing filed with the clerk, having waived a jury, and the evidence introduced by the respective parties have been fully considered, the court finds the facts in issue in said action as follows:

I.

Defendant is a corporation organized and doing business under the laws of the State of California.

II.

Length of the road in the several counties.

Of said Northern railway (of California) there had been, prior to the first Monday in March, 1880, completed, and there was in operation in the several counties through which it runs, 114.30 miles, to wit: In the county of Alameda, 6.85 miles; in the county of Contra Costa, 23.75 miles; in the county of Solano, 16.95 miles; in the county of Yolo, 20.75 miles; in the county of Colusa, 46 miles, and all within the State of California.

III.

Within due time the secretary of the defendant filed with the State Board of Equalization the sworn statement required by section 3664 of the Political Code of California.

51 IV.

Assessment of State board not given in evidence on trial.

No record of assessment as made by said State Board of Equalization was introduced as evidence on the trial; and there was no other evidence as to the assessment in question than as shown by the documents set out in these findings, or as shown by the facts stated in the findings.

V.

The following is a copy of the assessment roll for the county of Colusa for the year 1881, so far as it relates to the tax in question in this case, and includes said tax, and is the only evidence of the assessment of said tax, no other record of the assessment as made by the State Board of Equalization having been introduced, to wit:

Original.—Assessment Book of the Property of Colusa County for the year 1881. *Assessed to all owners when known and when unknown to unknown owners.*

5—983

No.	Taxpayer's Name.	Description of Property. Real estate other than city and town lots—Subdivisions of sections, or metes and bounds; city and town lots; improvements; personal property.	Value of the franchise, roadway, road-bed, rails, and rolling-stock of railroads, as apportioned to the county by the State Board of Equalization.	Total value of all property after deductions.	Total tax.	Special school tax.	Remarks.
746	Northern Railway Company.	Office of the State Board of Equalization, Sacramento, *May* 14, 1881. To Geo. B. Hardin, *Assessor of Co usa County:* Sir: The State Board of Equalization on the 2d day of May, 1881, assessed for the year 1881 the Northern Railway Company for its franchise, roadway, road-bed, rails, and rolling-stock in the State of California in the aggregate sum of $1,543,050. The entire length of main track of railway of said company in the said State is 114.30 miles. The length of the main track of said railway in Colusa county is 46 miles. The description of the whole of the main track of the railway of the said Northern Railway Company, and the right of way for the same in the county of Colusa, is as follows: Beginning at the line between Colusa and Yolo counties on a line projected from Fenton to Harrington, on or near the north line of T. 12 N., R. 1 W., Mt. D. B. and M.; thence running northwesterly to Williams; thence north to town of Willows. The assessed value per mile of said railway as fixed by a *pro rata* distribution per mile of the assessed value of the whole franchise, roadway, road-bed, rails, and rolling-stock of such railway of the said company within this State is $13,500. The apportionment of the assessment of the said franchise, roadway, road-bed, rails, and rolling-stock of this board for and to Colusa county is $621,000. WARREN DUTTON, *Chairman.* JAMES L. KING, M. M. DREW, D. M. KENFIELD, T. D. HEISKELL, *State Board of Equalization.* E. W. MASLIN, *Clerk.*	$ 621,000	$ 621,000	$ cts. 8,694 00	$ cts.	Property offered for sale March 17, 1882, and withdrawn March 18, 1882, as directed by controller of State. See Sec. 3899, Political Code.

(Duly certified by the auditor.)

52 VI.

The board of supervisors of Colusa county duly apportioned said tax among the legal subdivisions of said county.

VII.

The delinquent list for the said year, so far as it relates to the tax in question, was duly made up in form corresponding with the original assessment roll.

VIII.

In pursuance of section 3738 of the Political Code of California, the board of supervisors of Colusa county duly passed an order, entered in the minutes, dispensing with the duplicate assessment roll for that county for that year.

IX.

The controller of the State transmitted a letter to the tax collector of Colusa county, in pursuance of the provisions of section 3899 of the Political Code, directing the tax collector of Colusa county to offer the property in question for sale but once, and if there were no *bona fide* purchasers to withdraw it from sale.

X.

On or about the eleventh day of April, A. D. 1882, the tax collector of the county of Colusa, in obedience to the provisions of section 3899 of the Political Code of California, transmitted to the controller of the State of California, with his indorsement thereon of the action had in the premises, a copy of the delinquent list relative to the tax in question. Said indorsement shows that the said tax collector had offered said property for sale and withdrawn it because there was no purchaser for the same.

XI.

The controller of State, in pursuance of the provisions of the same section, transmitted to the tax collector of said county a letter directing him to bring suit.

XII.

Indebtedness of defendant secured by mortgage.

On the 14th day of April, 1877, the defendant was indebted to divers persons in large sums of money advanced to construct and equip the defendant's railroad hereinbefore described. To secure the payment of such indebtedness the defendant, on the said 17th day of April, 1877, executed and delivered a mortgage to Eugene Kelly and Henry D. Laidlaw upon said Northern railway,
53 its franchises, and all rolling-stock and appurtenances, no part of which has ever been paid, except the accruing interest.

XIII.

At the session of the Legislature of 1881 a bill was introduced in the Assembly of said Legislature, of which the following is a true copy, and that such proceedings were thereupon had in the said Legislature as are hereinafter set forth. Said bill was an amendment to section 3664 of the Political Code of the State of California, which section, prior to said amendment, read as follows, to wit:

SECTION 3664. "On or before the first Monday in May, in each year, the State Board of Equalization shall assess the franchise, roadway, road-bed, rails, and rolling-stock of railroads operated in more than one county. The president, secretary, cashier, or managing agent, or such other officer as the State Board of Equalization may designate, of any corporation operating any railway in more than one county in this State, shall furnish said board, on or before the first Monday of April in each year, a statement, signed and sworn to by one of such officers, showing in detail for the year ending on the first Monday in March in such year:

(*a.*) The whole number of miles of railway owned, operated, or leased in the State by such corporation making the return, and the value thereof per mile, with a detailed statement of all property of every kind located in the State.

(*b.*) Also a detailed statement of the number and value thereof of engines, passenger, mail, express, baggage, rolling-stock in use on the corporation's line in the State during the year for which the return is made. The return shall show the amount of rolling-stock, the annual gross earnings of the entire railway, and the proportionate annual gross earnings of the same in this State, as nearly as practicable, and all the property designated hereafter in this section, and such other facts as the State Board of Equalization may in writing require.

If such officer or officers so designated shall fail to make and furnish such statement, said Board of Equalization shall fix the value of and proceed to assess the property of the corporation so failing; the valuation fixed by them shall be final and conclusive. The said property shall be assessed at its actual value.

Assessments shall be made upon the entire railway within the State, and shall include the right of way, road-bed, track, bridges, culverts, and rolling-stock. The depots, station grounds, shops, buildings, and gravel-beds, shall be assessed by the assessor of the county where situated as other property. On or before the fifteenth day of May in each year said board shall transmit to the county assessor of each county through which any railway, operated in more than one county, may run, a statement showing the length of the main track, or tracks, of such railway within the county, together with a description of the whole of said tracks within the county, including the right of way, by metes and bounds, or other description sufficient for identification, and the assessed value per mile of the same, as fixed by a *pro rata* distribution per mile of the assessed value of the whole franchise, roadway, road-bed, rails, and rolling-stock of such railway within this State.

54 Said statement shall be entered on the assessment roll of the county. At the first meeting of the board of supervisors, after such statement is received by the county assessor, they shall make and cause to be entered in the proper record book an order stating and declaring the length of the main track, and the assessed value of such railway lying in each city, town, township, school district, or lesser taxing district in their county through which such railway runs, as fixed by the State Board of Equalization, which shall constitute the taxable value of said property for taxable purposes in such city, town, township, school, road, or other district; and the clerk of the board of supervisors shall transmit a copy of each order or equalization to the city council or trustees, or other legislative body of incorporated cities or towns, the trustees of each school district, and the authorized authorities of other taxation districts through which such railway runs. The taxes on said property, for State and county purposes, after collection by the county collector, shall be paid over to the county treasurer as other taxes. All such railway property shall be taxable upon said assessment, at the same rates, by the same officers, and for the same purposes, as the property of individuals within such counties, cities, towns, townships, school districts, and lesser taxation districts."

And the said amendment is in the following words:

"respectively, any person dissatisfied with an assessment made by said Board of Equalization against his or its property may, within five days after such assessment is made and entered of record on the books of said board, by written petition apply to said board to have the same corrected in any particular. Said petition must state the grounds of objection to such assessment, and must be filed with the clerk of the board. The board must fix a time for hearing said petition, which must not be less than five nor more than ten days from the time the same is filed, and must, upon such hearing, receive such proofs as may be offered by the petitioner, or by the attorney general, or any other person appearing against such petition, and such other proofs as, in the judgment of the board, bear upon the question at issue. By an order of the board or upon the demand of the petitioner, the proofs shall be reduced to writing by a phonographic reporter. If the board do not order the proofs to be reduced to writing by such reporter, but the same is done upon the demand of the petitioner, the petitioner must pay the expenses thereof. After hearing such proofs the board shall, within ten days, determine, in writing, upon the matters involved in the petition and proofs, and may alter, in conformity with such determination, the assessment complained of. Any person feeling aggrieved at such determination who shall pay the tax upon the assessment complained of, and may, within ten days after such payment, bring an action in the superior court, in the county in which the tax, or any part thereof, has been paid against the Board of Equalization, and in the complaint may allege any fact averred in his petition, filed with said board, showing the illegality of such

tax in whole or in part, or that the property, in whole or in part, was assessed for more than its actual value.

55 A copy of the complaint must, within thirty days after it has been filed, be served upon the chairman or clerk of said board, and said board shall have thirty days in which to answer or demur to the same. At the time the board answers or demurs it may demand that the suit be tried in the superior court of Sacramento county.

The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials, and appeals shall be applicable to the proceedings herein provided for, and the testimony taken before the Board of Equalization may be read in evidence; and in such proceeding the court shall have power to determine the matters involved in the issue, and, in making such determination, may ascertain whether the property was taxed or assessed in proportion to its value, and if the determination is in favor of the petitioner, as to the illegality of the tax, in whole or in part, in excess of its actual value, it shall, by its judgment, direct the return of the tax paid, or of such part thereof as may have been illegally exacted, or exacted in excess of the actual value of the property.

Upon presentation of a certified copy of such final judgment to the controller he shall draw his warrant upon the State treasurer for the amount of such judgment, and the treasurer shall pay the same out of any funds in the State treasury not otherwise appropriated. At the next settlement, made thereafter by the controller with the county treasurer of any county that received any portion of said illegal tax, he shall require the treasurer thereof to pay such portion into the State treasury, to reimburse the State for the advance made on said judgment. The Board of Equalization may direct the district attorney of any or every county interested, and the attorney general, to defend for such board any proceedings commenced under the provisions of this section."

The said amendatory bill was entitled "An act to amend an act to establish a political code, approved March 12, 1872, by adding thereto two new sections, to be known as sections 3664 and 3665, relating to the assessments of the railroads and other property by the State Board of Equalization and county assessors for the purposes of taxation." Said bill, in the due course of business, was passed by the Assembly, and contained all the matter which is found in said section 3664, as first above quoted.

Having passed the Assembly, the bill was transmitted to the Senate. The Senate amended section 3664 by adding thereto the latter portion of the matter hereinbefore quoted. Upon the returnof the bill to the Assembly the following proceedings were had, as appears on the Journal of that body:

"The consideration of Senate amendment to Assembly bill No. 475, 'An act to amend an act entitled an act to establish a political code,' approved March 12, 1872, by adding thereto two new sections, to be known as sections 3664 and 3665, relating to assessments of railroads and other property by the State Board of Equalization and county assessors for the purpose of taxation," resumed.

"The previous question was demanded by Messrs. Edwards, Jackson, and Paulk.

56 "The ayes and noes were demanded by Messrs. Paulk, Whipple, and Del Valle.

"The roll was called, and the House refused to order the main question, by the following vote:

"Ayes: Messrs. Arick, Brown, Burns, Cameron, Crank, Daggett, Edwards, Gay, Geary, Gilmore, Hartshorn, Hoitt, Holden, Jackson, Jones, Kellogg, Kilburn, Lane, May, McCallion, McClure, McDonald, Mein, Mudgett, Noonan, Patterson of San Joaquin, Reddick, Reynolds, Streeter, Swift, Wasson of Ventura, Wasson of Mono, Young, and Mr. Speaker—34.

"Noes: Messrs. Baker of Sacramento, Baker of Yolo, Birney, Bost, Branch, Chandler, Colman, Crumpton, Cunningham, Del Valle, Felton, Fraser, Freer, Garrity, Gavigan, Griffith, Hale, Hendrick, Henshaw, Howard, Keating, Leach, Leake, Lewis, Long, Matthews of Tehama, Matthews of San Benito, McMurray, Murphy, O'Connor, Patterson of Nevada, Paulk, Pinder, Platt, Samuels, Sargent, Siebe, Van Fleet, Wentz, Wertsbaugher, Whipple, and Wood—42."

After the transaction of other business, the printed Journal proceeds:

"The consideration of Senate amendment to Assembly bill 475 resumed.

"The question recurred on concurring therewith.

"The ayes and noes were demanded by Messrs. Paulk, Sargent, and Wentz.

"The roll was called, and the Speaker declared the House had concurred in the Senate amendments:

"Ayes: Messrs. Arick, Baker of Sacramento, Birney, Bost, Brown, Burns, Crank, Daggett, Edwards, Estee, Felton, Garrity, Gavigan, Geary, Gilmore, Hartshorn, Hoitt, Holden, Howard, Jackson, Keating, Kellogg, Laine, Mason, May, McCallion, McClure, McDonald, Mein, Noonan, O'Connor, Patterson of San Joaquin, Pinder, Reddy, Streeter, Swift, Van Fleet, Warkins, Wasson of Mono, Young, and Mr. Speaker—39.

"Noes: Messrs. Alviso, Baker of Yolo, Branch, Chandler, Colman Cunningham, Del Valle, Fraser, Gay, Griffith, Hale, Hendrick, Henshaw, Jones, Leake, Leach, Lewis, Long, Matthews of San Benito, McMurray, Murphy, Patterson of Nevada, Paulk, Platt, Reynolds, Samuels, Sargent, Siebe, Wasson of Ventura, Wentz, Wertsbaugher, Whipple, and Wood—32."

The following is a copy, on the same point and vote, of the original written Journal of the Assembly, deposited in the office of the secretary of State, showing the last action of the House on Senate bill No. 475:

California Legislative Assembly, Twenty-fourth Session.

ASSEMBLY CHAMBER, FRIDAY, *March* 4, 1881.

Consideration of Senate amendments to Assembly bill No. 475 resumed.

The question recurred on concurring therewith.

The ayes and noes were demanded by Messrs. Paulk, Sargent, and Wentz. Roll called. The House concurred in Senate amendments by the following vote:

Ayes: Arick, Baker of Sacramento, Birney, Bost, Brown,
57 Burns, Crank, Daggett, Estee, Edwards, Felton, Garrity, Gavigan, Geary, Gilmore, Hartson, Hoitt, Holden, Howard, Keating, Kellogg, Lane, Mason, May, McCallion, McClure, McDonald, Mein, Noonan, O'Connor, Patterson of San Joaquin, Pinder, Reddy, Streeter, Swift, Van Fleet, Warkins, Wasson of Mono, Young, and Mr. Speaker—39.

Noes: Alviso, Baker of Yolo, Branch, Chandler, Coleman, Cunningham, Del Valle, Fraser, Gay, Griffith, Hale, Hendrick, Henshaw, Jones, Leach, Leake, Lewis, Long, Matthews of San Benito, McMurray, Murphy, Patterson of Nevada, Paulk, Platt, Reynolds, Samuels, Sargent, Siebo, Wentz, Wasson of Ventura, Wertsbaugher, Whipple, and Wood—32.

Matthews of Tehema and Kilburn paired, Kilburn voting aye and Matthews no. Messrs. Cameron and Crumpton paired; Cameron aye, Crumpton no.

The following facts also appear from the Journal:

Other business having intervened, "the consideration of Senate amendments to Assembly bill No. 475 resumed, the Speaker declaring that this was not the final action on the bill, and that the House had concurred in Senate amendments to Assembly bill No. 475, by a vote of 39 ayes to 32 noes. Mr. Paulk appealed from the decision of the chair on the ground that forty-one votes were required for concurrence. The question recurred, shall the decision of the chair stand as the judgment of the House?"

After other business, on motion, the appeal was laid on the table by a vote of 38 ayes to 23 nays.

Mr. Hale then entered his protest against the decision of the Speaker, on the ground that forty-one members voting in the affirmative are necessary to adopt the amendments, the vote on concurring in the amendments being the only action of the House thereon. Thereupon again: "The Speaker stated that the action on the Senate amendments to the bill was not the final action on the bill, and consequently a concurrence or non-concurrence in the amendments required a majority vote only."

Mr. Griffith and Mr. Kellogg then each entered his protest against the decision of the Speaker, declaring the Senate amendments concurred in on the ground that a concurrence required a majority of the whole House.

No other vote was had, or other announcement by the Speaker made in regard to this bill. No other action was had by the House except that on March 4, being the last act before adjournment *sine*

die, the bill was reported as correctly enrolled, and as having been presented to the Governor for approval. No action was taken on this report, and the bill does not appear to have been reported to the House as having been approved.

XIV.

The whole of said property assessed by the State board to the defendant.

The State Board of Equalization in assessing said value of said property to and against defendant assessed the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and fran-
58 chises, without deducting therefrom the value of the mortgage or any part thereof, given and existing thereon as aforesaid, to secure the indebtedness of said company to the holders of said bonds, notwithstanding they had full knowledge of the existence of the said mortgage; and in making said assessment the said State Board of Equalization did not consider or treat said mortgage as an interest in said property, but assessed the whole value thereof to the defendant in the same manner as if there had been no mortgage thereon.

XV.

Other corporations of various kinds.

At, before, and ever since the adoption of the constitution of California, now in force, there were, and are, existing under the laws of said State, corporations of various kinds, formed for the purpose and actually operating and doing business, and holding and using property in more than one county in said State. Corporations in the said State of California now are, and ever have been, formed under general laws relating thereto, and there have ever existed corporations formed under its said laws for fire, marine, mutual life, health, and accident insurance; building ferries, constructing and operating roads, railroads, wagon-roads, telegraphs, bridges, wharves, chutes, and piers, and for constructing and operating canals, for the purpose of acquiring lands in large tracts and distributing them as homesteads among the corporators for savings and loans, for mining, for the sale and distribution of water in the cities and towns for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes, cemeteries, agricultural fairs, and various other purposes.

There is now, and for more than three years last past has been, a railroad in use and operation, extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State, a distance of 26½ miles, which said road now is, and ever has been, operated in more than one county in this State, and has the same gauge as the road of this defendant, and has ever been operated in like manner and for like uses and purposes, and is now, and for more than two and a half years last past has been, in the ownership and under the operation and control of one N. D.

Rideout, a natural person and citizen of the United States, and resident of the State of California.

XVI.

Rules of equality as regards the system adopted by said board.

The State Board of Equalization, in making the supposed assessment of said roadway of defendant, did knowingly and de-
59 signedly include in the valuation of said roadway the value of fences erected upon the line between said roadway and the land of coterminous proprietors. Said fences were valued at $300 per mile.

XVII.

The Legislature of the State of California, on the 27th day of March, A. D. 1862, passed an act entitled "An act to provide for the construction of a railroad from Mokelumne City to Woodbridge, in the county of San Joaquin," which act is found in he statutes of California for 1862, at page 97, and is hereby made a part of this finding.

On the 29th day of March, A. D. 1878, the Legislature of the State of California passed an act entitled "An act to provide for the construction of a railroad from the town of Truckee, Nevada county, to Tahoe City, Lake Bigler, in Placer county, and to regulate fares and freights thereon," which act is found in the statutes of California for 1877–'8, at page 698 *et seq.*, and is hereby made a part of this finding.

At the same session said Legislature passed another act, on the 30th day of March, A. D. 1878, entitled "An act to provide for the construction of a railroad from Ione, in the county of Amador, to a point in or near the towns of Sutter Creek or Jackson, in said county, and to regulate fares and freights thereon," which act is found in the same volume of said statutes of California, at page 841 *et seq.*, and is hereby referred to and made a part of this finding.

Numerous other acts of a similar character are found scattered through the annual volumes of the statutes of California. It does not appear from the evidence whether said acts have been acted upon by the grantees therein named or not.

XVIII.

The California Northern railway is a railway having the standard gauge of four feet eight inches and a half—being the same gauge as that of the road of said defendant, the Northern Railway Company of California—extending from Marysville, in Yuba county, to Oroville, in Butte county, a distance of twenty-six and one-half miles, twelve and one-half miles being in Yuba and fourteen in Butte county, built and formerly owned and operated by the California Northern Railway Company, a corporation organized under the laws of California. On the 30th day of July, A. D. 1881, the said railway was sold under a decree of foreclosure of mortgage upon said road, and at said sale purchased

by N. D. Rideout, a natural person, who received a conveyance thereof in pursuance of said sale, went into possession thereof, and has
60 ever since—being about two years and a half—possessed and operated, and he is now possessed of and operating said railway, claiming to be the owner thereof under said decree of foreclosure and sale, and since said sale said railway has been assessed—or purported to be assessed—to, and the taxes claimed to have been levied thereon have been paid by, said Rideout.

XIX.

The roadway occupied by the defendant varies in width from thirty feet to one hundred feet.

XX.

The distance of one mile from Benica across the Straits of Carquinez to Port Costa, over which freight and passengers are carried by said defendant upon steamers owned by said defendant, and used for the purposes of said railroad, was assessed to said defendant as one mile of said road, at the same amount per mile as any other equal portion of said road, said one mile across said straits constituting one mile of the aggregate of 114.30 miles of said railroad assessed to said defendant, and in so assessing said one mile the said board followed the statement filed by said defendant, and made said assessment in accordance therewith.

XXI.

There was no testimony or facts in the case other than as appears in these findings, to countervail the effect or legal operations of any of the documents stated in these findings.

Conclusions of law.

From the foregoing facts the court finds, as a conclusion of law, that the defendants are entitled to judgment in their favor, with costs.

(Signed) FIELD, *Circuit Justice.*
(Signed) SAWYER, *Circuit Judge.*

Endorsed: Filed January 22, 1884. L. S. B. Sawyer, clerk.

61 *Judgment.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY. } No. 2805.

This cause having come on regularly for trial on the 27th day of July, 1883, being a day in the July, 1883, term of said court, before

the court sitting without a jury, a trial by jury having been waived by stipulation of the attorneys for the respective parties, duly filed with the clerk of said court, Hon. E. C. Marshall, attorney general of the State of California, and J. F. Harrington, Esq., appearing as attorneys, and A. Rhodes, D. S. Terry, and John T. Carey, Esqs., as counsel for plaintiff, and H. S. Brown, as attorney and
62 S. W. Sanderson and P. D. Wiggenton, Esqs., as counsel for defendant, and the trial having been proceeded with on the 1st, 2d, 3d, 7th, 8th, 9th, 10th, 14th, and 15th days of August of said term and year, and witnesses on the part of the plaintiff and of the defendant having been sworn and examined, and documentary evidence on behalf of the respective parties having been introduced, and the evidence being closed, the cause after arguments of counsel having been submitted to the court for consideration and decision, and the court after due deliberation having filed its finding and ordered that judgment be entered in accordance therewith:

Now, therefore, by virtue of the law and the finding aforesaid it is considered by the court that the people of the State of California, plaintiff, take nothing by this action; that the Northern Railway Company, defendant, go hereof without day, and that the said defendant recover from said plaintiff its costs in this behalf expended taxed at ———.

63 Judgment entered January 22d, 1884.

L. S. B. SAWYER, *Clerk.*

I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above-entitled cause.

Attest my hand and the seal of said circuit court, this 22d day of January, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk.*

Endorsed: Filed January 22, 1884. L. S. B. Sawer, clerk.

64 *Clerk's Certificate.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

THE NORTHERN RAILWAY COMPANY,

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, within and for the district of California, do hereby certify that the foregoing papers, hereto annexed, constitute the judgment roll in the therein-entitled action.

Witness my hand and the seal of said circuit court, this 22d day of January, A. D. 1884

[SEAL.] L. S. B. SAWYER, *Clerk,*
By F. D. MONCTON, *Deputy Clerk.*

65 (Endorsed:) Judgment roll. Filed 22d January, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

66 *Order Striking out portions of Amended Answers.*

At a stated term, to wit, the July term, A. D. 1883, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room in the city and county of San Francisco, on Thursday, the 19th day of July, in the year of our Lord one thousand eight hundred and eighty-three.

Present: Honorable Stephen J. Field, Associate Justice of the Supreme Court of the United States; Honorable Lorenzo Sawyer, circuit judge.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY. } No. 2805.

The motion heretofore argued and submitted to strike out
67 portions of the amended answer herein having been duly considered, it is ordered that so much of the said answer as is contained in articles numbered 11, 18, 19, 20, 21, and 24, and the third paragraph of article 15, and all of article 17 after the first two paragraphs, be stricken out as being matters of evidence or immaterial matter. In other particulars the motion is denied.

To this order the defendant excepts, and to the refusal of the court to strike out other matter the plaintiff excepts.

(Here follow opinions of Mr. Justice Field and Judge Sawyer, omitted in printing this recor, per stipulation of counsel.)

For opinion see record in case of The People *vs.* The Central Pacific R. R. Co.

162 *Bond on Writ of Error.*

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff in Error,
vs
THE NORTHERN RAILWAY COMPANY, Defendant in Error. } No. 2805.

Know all men by these presents, that we, Louis Marshall and H. A. Greene, are held and firmly bound unto the Northern Railway Company, defendant in error herein, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said the Northern Railway Company, its successors or assigns. To the payment of which, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our
163 heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the 24 day of July, 1884.

Whereas the above named, The People of the State of California,

has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the circuit court of the United States of America for the district of California, in the cause entitled The People of the State of California, plaintiff, *versus* The Northern Railway Company, defendant (No. 2805):

Now, therefore, the condition of this obligation is such, that if the above-named The People of the State of California, plaintiff in error, shall prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

164 LOUIS MARSHALL. [SEAL.]
H. A. GREENE. [SEAL.]

Signed, sealed, and delivered in presence of—
L. S. B. SAWYER.

UNITED STATES OF AMERICA, *District of California,* } *ss:*

Louis Marshall and H. A. Greene, being duly sworn, each for himself deposes and says: That he is a householder in said district, and is worth the sum of five hundred dollars, in lawful money of the United States of America, exclusive of property exempt from execution, and over and above all debts and liabilities.

LOUIS MARSHALL. [SEAL.]
H. A. GREENE. [SEAL.]

Subscribed and sworn to before me, this 24 day of July, 1884.
L. S. B. SAWYER,
Com'r U. S. Circuit Court, Dist. Cal.

165 Endorsed: The form of the within bond, and the sufficiency of the sureties thereon, are hereby approved. (Signed) Lorenzo Sawyer, U. S. circuit judge, 9th circuit. Filed July 25, 1884. L. S. B. Sawyer, clerk.

166 In the Circuit Court of the United States for the District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY. } No. 2805.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the district of California, do hereby certify that the foregoing one hundred sixty-five written and printed pages, numbered from 1 to 165, inclusive, are a full, true, and correct copy of the record and of all proceedings in the thereinentitled cause, and that the same together constitute the return to the annexed writ of error.

167 Witness my hand and the seal of said circuit court, this 26th day of July, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk.*

168 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of the ninth judicial circuit in and for the district of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between The People of the State of California, plaintiff in error, and the Northern Railway Company, defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 25th day of July, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

[SEAL.] L. S. B. SAWYER, *Clerk.*

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

169 *The Answer of the Judges of the Circuit Court of the United States for the District of California.*

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the court:

[SEAL.] L. S. B. SAWYER, *Clerk.*

[Endorsed:] No. 2805. United States Supreme Court. The People of the State of California, pl'ff in error, *vs.* The Northern Railway Company, def't in error. Writ of error. Filed July 25, 1884. L. S. B. Sawyer, clerk.

170 UNITED STATES OF AMERICA, *ss:*

To the Northern Railway Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1884, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the district of California, wherein The People of the State of California is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the district of California, this 25th day of July, A. D. 1884, and of the Independence of the United States the 109th.

[SEAL] LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

171 [Endorsed:] No. 2805. United States Supreme Court. The People of the State of California, pl'ff in error, *vs.* The Northern Railway Company, def't in error. Citation. Service of a copy of the within citation is hereby acknowledged. July 26th, 1884. Creed Haymond, attorney for def't in error. H. S. Brown, att'y for defendant. Filed July 26, 1884. L. S. B. Sawyer, clerk, by F. O. Moncton, d'p'y cl'k.

Endorsed on cover: California C. C. U. S. No. 983. The People of the State of California, plaintiff in error, *vs.* The Northern Railway Company. Filed 3rd October, 1884.